36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 83.

# POLYGAMY IN THE TERRITORITIES OF THE UNITED STATES.

[To accompany Bill H. R. No. 7.]

MARCH 14, 1860.

Mr. NELSON, from the Committee on the Judiciary, made the following

## REPORT.

*The Committee on the Judiciary, to whom was referred "A bill to punish and prevent the practice of Polygamy in the Territories of the United States, and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," having had the same under consideration, report as follows:*

Whatever differences of opinion may exist as to whether marriage is a civil or canonical contract, the whole civilized world regard the marriage of one man to one woman as being alone authorized by the law of God, and that while the relation of husband and wife exists, neither can be lawfully married to another person. It is believed that every enlightened legislature, both in Europe and in this country, "has thought it just to make the offence of polygamy or bigamy a felony, by reason of its being so great a violation of the public economy and decency of a well-ordered State." By the laws of ancient and modern Sweden, as stated by Justice Blackstone, it was punished with death; and the practice never obtained in England, even from the time of their German ancestors, as he states upon the authority of Tacitus. So far back as the statute of 1 Jac. 1, c. 11, it was enacted in England that if any person being married do afterwards marry again, the former husband or wife being alive, it should be felony, but within the benefit of clergy. Our ancestors brought with them to this country a sacred regard for the precepts of the Bible, and polygamy never having been tolerated in the colonies, was not recognized or permitted by the laws of any State of the confederacy, at the time of the adoption of the federal Constitution. In every State of the Union it is still treated as a crime, and in most, if not all of them, punished as a felony. The Congress of the United States has manifested its concurrence in the general sentiment by declaring in the 7th section of the act entitled "An act for the punishment of crimes in the District of Columbia," that whoever shall be convicted of the offence of bigamy "shall be sentenced to suffer imprisonment and labor for the first

offence, for a period not less than two nor more than seven years, and for the second offence, for a period not less than five nor more than twelve years." No argument is deemed necessary to prove that an act should be regarded as criminal which is so treated by the universal concurrence of the christian and civilized world. Marriage is the foundation of civil society. "It is honorable in all." Upon it depends the preservation of our social system, and the dearest ties that bind us to earth. Connected with it are some of the most important rights of property. Related to it are the interests of education and the prosperity of civil government. Barbarians may disown it, but enlightened nations everywhere respect and encourage it.

While such is the estimate placed upon the marital relation in our own and other countries, the moral sense of our own people, as well as of every refined and intelligent community upon the habitable earth, has been shocked by the open and defiant license which, under the name of religion and a latitudinous interpretation of our Constitution, has been given to this crime in one of our Territories. While persons have been excluded from society and are expiating as felons, in every penitentiary of the Union, the offence of polygamy, the citizens of Utah, "with a high hand and an outstretched arm," laugh to scorn the sacredness of the Bible and the majesty of our laws, and, claiming the largest liberty, under the exemptions from religious tests and the establishment of religion, deride an institution which was honored by the presence of our Savior as a farce, and stigmatize its observance as worse than a solemn mockery. It would, perhaps, require no elaborate statement to demonstrate that the framers of the Constitution, when they provided that "no religious test should ever be required as a qualification to any office or public trust under the United States," had in view the Test Oaths which were required by statute in the reign of Charles II., and that when they declared "Congress shall make no law respecting the establishment of religion or the free exercise thereof," they did not mean to dignify with the name of religion a tribe of Latter Day Saints disgracing that hallowed name, and wickedly imposing upon the credulity of mankind. When the characters and position of the distinguished men who framed that instrument are remembered, it is more than probable that by the term religion they meant only to convey the idea of a belief founded upon the precepts of the Bible; and holding it to be a common and established standard of faith, they did not design that any discrimination should be made in favor of one denomination of Christians over another, but surely they never intended that the wild vagaries of the Hindoo or the ridiculous mummeries of the Hottentot should be ennobled by so honored and sacred a name. Be this as it may, the question recurs, has Congress no power to prohibit a practice which is a disgrace to our country and a libel upon our institutions? An easy solution of this question may be found in the act entitled "An Act to establish a Territorial Government for Utah," approved September 9, 1850, and similar statutes as to other Territories. By the sixth section of that act it is declared that "all the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no

effect." And, by the seventeenth section, it is declared that "the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same, or any provision thereof, may be applicable."

Whatever "vexed questions" may exist in regard to the power of Congress to legislate as to other subjects affecting the Territories, it is conceived that no difficulty can arise as to the right to control the legislation of Utah and other Territories similarly situated, because the authority to do so is expressly reserved in the organic acts creating said Territories. This power was exercised by Congress in an act approved July 1, 1836, entitled "An act to disapprove and annul certain acts of the Territorial legislature of Florida, and for other purposes," by which the enactments of that assembly incorporating banks and insurance companies were disapproved and annulled; and, again, in an act approved March 3, 1839, entitled "An act to alter and amend the organic law of the Territories of Iowa and Wisconsin," by which the veto power was conferred upon the governors of those Territories. While it is true that Congress has delegated the power of legislation to Utah and other Territories, it is equally true that the power to control that legislation has been reserved; and, as it is declared that the Constitution and laws of the United States are in force therein, no adequate reason is supposed to exist against the power to declare an act criminal which has already been so declared in regard to the District of Columbia, over which Congress exercises an actual legislative control. The delegation of the power of legislation does not disrobe Congress, as supreme legislator, of its authority to enact a general law for the regulation of the Territories.

It is equally true that "the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, has been said to result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States, and that the right to govern would seem to be the inevitable consequence of the right to acquire property," as was declared in 1 Pet., 542–3; 14 Pet., 537; and 16 How., 194. And in Dred Scott's case it was declared "that, during the time it remains a Territory, Congress may legislate over it, within the scope of its constitutional powers, in relation to citizens of the United States, and may establish a territorial government, and the form of this local government must be regulated by the discretion of Congress, but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States in respect to their rights of persons or of property."—(See 19 How., 395.) Variant as the constructions of different persons may be as to what is property and what are the rights of property secured by the Constitution, there can be no question that, under these decisions and in virtue of the general power of control reserved expressly by Congress over the Territories, it is competent for Congress to declare any act criminal which is not sanctioned or authorized by the provisions of the Constitution. The committee, therefore, deem it within the legitimate power of Congress to prohibit polygamy in the Territories by legislative enactment.

The attention of the committee has been directed to a book entitled "Acts, resolutions and memorials passed at the several annual sessions of the Legislative Assembly of the Territory of Utah," &c., published at Great Salt Lake City, by Joseph Cain, public printer, 1855, and on page 103 of that book they find, Chapter XVII, "An ordinance incorporating the Church of Jesus Christ of Latter Day Saints." In reading this statute, and, indeed, in considering the whole subject submitted to them, the committee are painfully reminded of the injunction, "Beware of false prophets which come to you in sheep's clothing, but invariably they are ravening wolves. Ye shall know them by their fruits. Do men gather grapes of thorns or figs of thistles? Even so every good tree bringeth forth good fruit, but a corrupt tree bringeth forth evil fruit. A good tree cannot bring forth evil fruit, neither can a corrupt tree bring forth good fruit. Every tree that bringeth not forth good fruit is hewn down and cast into the fire. Wherefore, by their fruits, ye shall know them." And again: "And many false prophets shall arise and shall deceive many." And again: "But there were false prophets also among the people, even as there shall be false teachers among you, who privily shall bring in damnable heresies, even denying the Lord that bought them, and bring upon themselves swift destruction; and many shall follow their pernicious ways, by reason of whom the way of truth shall be evil spoken of. And, through covetousness shall they, with feigned words, make merchandise of you, whose judgment, now of a long time lingereth not, and their damnation slumbereth not." But, for these words of inspiration, it would be a marvel and a wonder that in the midst of the blaze of the light of the nineteenth century, clouds and darkness should overshadow one of the Territories of the American Union, and an effort should be made, in a remote and almost inaccessible part of the confederacy, to bring our holy religion into contempt, to defy the opinions of the civilized world, and to invoke the vengeance of Heaven by a new Sodom and a new Gomorrah to attract its lightnings and appease its wrath. Without commenting upon the wickedness and arrogance of such outrageous pretensions, suffice it to say that the act under consideration is obnoxious to all those objections which have been so repeatedly and so forcibly urged against any religious establishment in the United States. If the odious and execrable heresy of Mormonism can be honored with the name of religion, then the very attempt to incorporate the Church of Jesus Christ of Latter Day Saints, is an effort to accomplish in Utah, what has nowhere else been effected by our authority upon this continent—the establishment of one form of religious worship to the exclusion of all others. This statute is in direct violation of the amendment to the Constitution, article 1, providing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" for, if Congress itself has no authority to pass a law to establish a religion, it has no power to delegate such a power to a Territory, and the arrogant assumption of such an authority on the part of Utah is in direct contravention of one of the most cherished principles of that revered instrument.

Our ancestors, justly aroused and alarmed by the experience of centuries, were opposed to the establishment of any ecclesiastical domination whatever, and of the establishment or recognition of any clerical rights and prerogatives in this Union. Without encumbering this report with a history of alienations in mortmain, common recoveries, or the statute of uses, suffice it to say, that for centuries a jealousy has existed in England and in this country against allowing property, especially real property, to be tied up in the hands of ecclesiastical corporations. The law under consideration not only authorizes the "Church of Jesus Christ of Latter Day Saints to hold and occupy real and personal estate," but, by the second section of said act, it is declared that "the real and personal property of said church shall be exempt from taxation;" and, by the third section, it is "also declared that said church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, conveniences, comfort and control of said church, and for the punishment and forgiveness of all offences relative to fellowship, according to church covenants;" thus establishing a hierarchy obnoxious to the spirit of our institutions, and conferring privileges and prerogatives unknown to any other ecclesiastical denomination. Such monstrous powers and arrogant assumptions are at war with the genius of our government, and should meet promptly and without hesitation the indignant reprobation of Congress.

The act thus animadverted upon is in effect re-enacted by an act approved January 19, 1855, chapter 95, entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution;" and the committee, without hesitation, recommend that this, as well as the act already adverted to, be declared null and void as provided in the bill submitted to them.

The committee are of opinion that various other statutes enacted by the Territory of Utah are subject to just animadversion, and should be annulled by Congress; but, as this subject was not submitted to their consideration, they do not deem it expedient to enter upon its discussion; but they cannot abstain from declaring it as their solemn conviction whether it be necessary, in order to reform one of the most glaring abuses of the present century, to redivide the Territory of Utah, or bring its citizens to a faithful observance of the Constitution and laws of the United States, by the employment, if need be, to its utmost extent, of our military power; the most prompt and energetic measures are demanded to show our abhorrence of a vile superstition, which is antagonistic alike to the laws of God and man, and disgraceful to the spirit of the age in which we live.

The committee therefore report the bill as submitted to them, and respectfully recommend its passage.